AMENDED IN SENATE MAY 1, 2007

AMENDED IN SENATE APRIL 16, 2007

# SENATE BILL No. 831

**Introduced by Senator Lowenthal**

February 23, 2007

An act to amend Section 2890 of, to add Section 2890.3 to, and to add Article 6 (commencing with Section 2899) to Chapter 10 of Part 2 of Division 1 of, the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 831, as amended, Lowenthal. Telecommunications: billing: mobile telephony service.

(1) Existing law specifically requires a person, corporation, or billing agent to provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. Existing law establishes a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunication services, evidence that a call was dialed is prima facie evidence of authorization.

This bill would authorize a subscriber to present a person, corporation, or billing agent that has charged the subscriber for a direct dialed telecommunications service with evidence to rebut the prima facie evidence that the direct dialed telecommunications service was authorized, including, but not limited to, evidence that a call was dialed using a lost or stolen telecommunications device. The bill would prohibit a billing telephone company from billing for a person, corporation, or billing agent, unless that person, corporation, or billing agent complies

with those rebuttable presumption provisions. The bill would limit a subscriber's liability for unauthorized use to usage occurring before notification of the service provider, and would prohibit a subscriber's liability from exceeding $50.

The bill would require a person, telephone corporation, or billing agent that provides a telecommunications bill to include with each bill a prescribed statement of the subscriber's rights if billed for unauthorized charges. The bill would authorize the commission to develop, by rule, standard language to be used for the statement.

(2) Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service (cellular), broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but a state or local government is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.

Existing law authorizes the Public Utilities Commission to regulate telecommunication services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation, and to require telephone corporations to provide customer services. Existing law requires a provider of mobile telephony services to provide subscribers with a means by which a subscriber can obtain reasonably current and available information on the subscriber's calling plan or plans and service usage.

This bill would require that providers of mobile telephony service extend to new customers a minimum 30-day grace period, or 10 days after receipt of the first bill, whichever is later, during which the customer may rescind the agreement, without cost or penalty, if the customer finds that the service quality is unsatisfactory, except that the customer would be required to pay for those services used before the cancellation of the agreement.

The bill would provide for the reduction of early termination fees applicable after the grace period, proportional to the elapsed portion of the agreement term. The bill would prohibit a 3rd-party vendor of mobile telephony service from charging a subscriber any early termination fee payable to the 3rd-party vendor for canceling an agreement for mobile telephony service before the end of the term of the agreement.

The bill, except as specified, would prohibit a mobile data or mobile telephony service provider from changing a subscriber's agreement in a way that results in higher rates or charges or more restrictive terms or conditions. The bill would prohibit the term of an agreement from exceeding 2 years.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2890 of the Public Utilities Code is amended to read:

2890. (a) A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.

(b) If a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders shall not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(c) The commission may permit a subscriber's local telephone service to be disconnected only for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

(d) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company shall not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2) and subdivision (e).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall do all of the following:

(A) Include, or cause to be included, in the telephone bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name of the party responsible for generating the charge and a toll-free telephone number or other no-cost means of contacting the entity responsible for resolving disputes regarding the charge and a description of the manner in which a dispute regarding the charge may be addressed. Each telephone bill shall include the appropriate telephone number of the commission that a subscriber may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges and to provide the appropriate addresses to which written questions or complaints may be sent. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation, or billing agent.

(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber.

(e) (1) In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge.

(2) With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section.

(3) A subscriber may present a person, corporation, or billing agent that has charged the subscriber for a direct dialed telecommunications service with evidence to rebut the prima facie

evidence that the direct dialed telecommunications service was authorized, including, but not limited to, evidence that a call was dialed using a lost or stolen telecommunications device.

(f) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

(g) A subscriber's liability for unauthorized use is limited to usage occurring before notification of the service provider. A subscriber's liability shall not exceed fifty dollars ($50).

(h) For purposes of this section, "billing agent" is the clearinghouse or billing aggregator.

SEC. 2. Section 2890.3 is added to the Public Utilities Code, to read:

2890.3. (a) As used in this section:

(1) "Billing agent" means the clearinghouse or billing aggregator.

(2) "Unauthorized charges" include charges incurred using a lost or stolen telecommunications device.

(b) (1) Notwithstanding any other provision of law, a person, corporation, or billing agent that provides a telecommunications bill shall include with each bill a clear and conspicuous statement of a subscriber's rights if billed for unauthorized charges.

(2) The statement shall disclose that the subscriber will be notified of the results of any investigation of a billing complaint within 30 days from the date on which the complaint was received.

(c) The commission may develop, by rule, standard language to be used for the statement required by subdivision (b) that describes with specificity only the following information:

(1) The subscriber's rights if billed for unauthorized charges.

(2) The subscriber's right to be notified of the results of any investigation of a billing complaint within 30 days from the date on which the complaint was received.

*(d) The commission may also develop, by rule, separate standard language to be used when the statement required by subdivision (b) is provided by text message.*

SEC. 3. Article 6 (commencing with Section 2899) is added to Chapter 10 of Part 2 of Division 1 of the Public Utilities Code, to read:

Article 6. Mobile Telephony Service

2899. For purposes of this article, the following terms have the following meanings:

(a) “Mobile telephony service” means commercially available interconnected mobile phone service that provides access to the public switched telephone network (PSTN) via a mobile communication device employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). “Mobile telephony service” does not include mobile satellite service or mobile data service used exclusively for the delivery of nonvoice information to a mobile device.

(b) “Month-to-month account” means an agreement for mobile telephony service where the customer is not required to purchase more than one month of service.

(c) “Prepaid account” means an agreement for mobile telephony service for a specified dollar amount less than one hundred dollars ($100) that the customer pays in full before receiving service.

2899.1. (a) Each provider of mobile telephony service shall extend to new service customers, without cost or penalty, a grace period of at least 30 days after executing the agreement, or 10 days after receipt of the first bill, whichever is later, for customers to cancel the agreement and terminate service, if the customer finds that the service quality is unsatisfactory, except that the customer shall pay for those services used before the cancellation of the agreement. Each new mobile telephony service agreement shall provide reasonable notice of this grace period and the right of the customer to cancel the agreement if the customer finds that the service quality is unsatisfactory.

(b) Each provider of mobile telephony service shall extend to existing customers, without cost or penalty, a grace period of at least 30 days after executing an agreement for additional service, renewal of service, or modification of service, for customers to cancel the agreement and terminate service, if the customer finds that the service quality is unsatisfactory, except that the customer shall pay for those services used before the cancellation of the agreement. Each new mobile telephony service agreement with an existing customer shall provide reasonable notice of this grace period and the right of the customer to cancel the agreement if the customer finds that the service quality is unsatisfactory.

(c) This section does not apply to a month-to-month account or a prepaid account.

2899.2. If an agreement for mobile telephony service is canceled after the grace period and before the end of the term of the agreement, any early termination fee or penalty shall be reduced by a fraction equivalent to the number of months in the agreement term that have elapsed over the total number of months in the agreement term.

2899.3. A third-party vendor of mobile telephony service shall not charge a subscriber any early termination fee or penalty payable to the third-party vendor for canceling an agreement for mobile telephony service before the end of the term of the agreement. This section does not prevent any provider of mobile telephony service from charging an early termination fee.

2899.4. (a) A mobile data or mobile telephony service provider shall not change the terms of the agreement of a subscriber in a way that results in higher rates or charges or more restrictive terms or conditions, unless all of the following conditions are met:

(1) The change is permitted by law.

(2) The subscriber is provided with at least 30 calendar days prior written notice before the effective date of the change, during which time the subscriber may terminate service before the effective date of the change. The written notice shall include the following statement in at least 12-point boldface type: “The terms of your agreement have changed.” Following this heading shall be a clear, concise, and conspicuous statement explaining the change in the rate, charge, term, or condition in the agreement of the subscriber.

(3) If the subscriber’s agreement contains any early termination fee or charge provision, any early termination fee or charge is waived and shall not be collected by the service provider if the subscriber elects to terminate service pursuant to paragraph (2). If the subscriber’s agreement contains any early termination fee or charge, the prior written notice shall, in addition to the notice required in paragraph (2), include the following statement in at

least 12-point boldface type: “You have a right to terminate service without penalty.” Following this heading shall be a clear, concise, and conspicuous statement explaining the number of days that the subscriber has to terminate service without incurring a fee or charge.

(b) Subdivision (a) does not apply to either of the following:

(1) If the subscriber initiates the request to change the terms or conditions of the contract, including, but not limited to, a request for additional services not offered under the existing agreement.

(2) If there is an increase in a tax or fee that the mobile data or mobile telephony service provider is required to collect from the subscriber and remit to a governmental entity.

2899.5. The term of an agreement for mobile telephony service shall not exceed two years.

2899.6. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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